

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

SYLVIA L. KAFFENBURGH
ALBERT W. KAFFENBURGH, JR.

Claim No. CU-1555
Claim No. CU-1591

Decision No. CU - 6073

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

O'Connell & Aronowitz
By Lewis A. Aronowitz, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the total amount of \$770,355.00, were presented by SYLVIA L. KAFFENBURGH and ALBERT W. KAFFENBURGH, JR., for loss of improved real property with furnishings, located at Marianao, Havana, Cuba, and for loss of stock interests in Cuban corporations. Claimants have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimants contend that they owned real and personal property located at 2101 Calle 150, Country Club Park, Marianao, Havana, Cuba, consisting of a 2-story brick and stone residence, with basement and tiled roof, with swimming pool, bath house, patio, 3-car garage, servants' quarters, all situated on a lot of 5,500 square meters, with gardens and landscaping. Claimants state they purchased the land in 1937 for a consideration of \$14,899.11 and built the house in 1938; and that between 1938 and the time of loss in 1960, they made additional improvements to the land and completely furnished the house.

Additionally, ALBERT W. KAFFENBURGH, JR. claims \$103,754.00 for a stock interest in Cigarrera Nacional, S.A. and \$165,601.00 for a stock interest in Standard Havana Tobacco Company which items will be discussed further below.

Real and Personal Property

For this portion of their claim, claimants have asserted the following amounts as fair market value:

Land and house	\$216,000.00	
Additions (improvements to land)	85,970.00	
Basement (personalty)	<u>24,030.00</u>	\$326,000.00
Furnishings:		
First floor - 4 rooms and related area	63,035.00	
Pantry, kitchen, servants' rooms, etc.	36,466.00	
Second floor - 5 rooms, closets, baths	50,154.00	
Tower room - bath house	12,505.00	
Appreciation of personalty	<u>12,840.00</u>	<u>175,000.00</u>
Total		\$501,000.00

Claimants have submitted letters from persons with personal knowledge of their ownership of the claimed real and personal property, including business

executives, and the former Canadian Ambassador to Cuba and a former United States Ambassador to South American countries; as well as reports to the Internal Revenue Service in 1960, photographs of the properties, newspaper clippings, their own statements in support of the claim, and a report to the Commission from sources abroad. On the basis of the entire record, the Commission finds that claimants, SYLVIA L. KAFFENBURGH and ALBERT W. KAFFENBURGH, JR., were the joint owners of the real and personal property located at 2101 Calle 150, Country Club Park, Marianao, Havana, Cuba.

The evidence of record, including an affidavit dated November 4, 1965, executed by claimants' Cuban counsel, as well as a newspaper clipping from an Havana newspaper, establishes that he remained in charge of the subject property between April 1960, when the claimants left Cuba, and October 1960, when counsel left Cuba; and that the subject property was taken by the Government of Cuba on December 23, 1960.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties were outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). On the basis of the record, the Commission finds that the real property was taken by the Government of Cuba on December 23, 1960, pursuant to said Urban Reform Law, and that the personal property was taken on the same date.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is most appropriate to the property

and equitable to the claimant. This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In 1960 the claimants submitted a Statement to the Internal Revenue Service in connection with losses sustained in Cuba, including the real and personal property, subject of these claims. Claimants stated that their total loss in connection with the real and personal property was in the amount of \$438,390.00, the cost to them of all of the properties located at the aforesaid residence at Country Club Park, Marianao, Havana, Cuba. These losses were then summarized by claimants as follows:

Land - 5,500 square meters	\$ 25,000.00	
House	150,000.00	
Improvements to land	77,200.00	
Basement	<u>24,030.00</u>	\$276,230.00
Personalty:		
First floor	63,035.00	
Pantry	36,466.00	
Second floor	50,154.00	
Tower room and bath house	<u>12,505.00</u>	<u>162,160.00</u>
Total		\$438,390.00

The Commission has considered the entire record including amounts now asserted, the reports prepared for the Internal Revenue Service, affidavits, photographs and description, a detailed listing of personalty, statements of claimants and evidence available to the Commission concerning the value of similar real and personal property in Havana, Cuba, as well as a report from abroad reflecting the value of the plot at the time of purchase as \$14,899.11.

Based on the aforesaid record, including the description of the house as constructed of brick and stone, with tile roof, of two stories and basement; with thirteen rooms and servants' quarters of five rooms, with a 3-car garage, and other usual facilities, the Commission finds that at the time of taking, the land had a value of \$25,000 and the house had a value of \$150,000, the rates of depreciation and appreciation being equal. The improvements to the land are found to have had a value of \$77,200 at the time of loss.

The Commission has examined the listing representing the item of "Basement" and finds it consists of various kinds of personalty. It appears that the personal property set out on a 15-page listing was acquired at various times between 1938 and 1960. The exact times of acquisition are not evidenced, although this information was suggested on several occasions. Accordingly, the Commission finds that the personalty had an average life of ten years. The Commission has adopted a rate of depreciation of five per cent with regard to household furniture and furnishings in general, except for antiques, silver, crystal and the like. Accordingly, it is found that the personalty associated with the basement had a value of \$12,015 at the time of loss, the personalty not subject to depreciation had a value of \$70,491.00, and the remainder, after depreciation, had a value of \$45,834.50 on the date of loss. Accordingly, the Commission concludes that each claimant suffered a loss of \$190,270.25 in connection with loss of the residence and related personalty on December 23, 1960.

Standard Havana Tobacco Company

The record establishes that this company in the leaf tobacco business was organized in Cuba in 1950 with an authorized issue of 1500 shares of stock, 1,000 of which were purchased by claimant for \$100,000 and the other 500 were purchased by another person for \$50,000. These 500 were later repurchased by the company. Standard Havana Tobacco Company was nationalized by the Government of Cuba on October 24, 1960 by Resolution 3, pursuant to Law 851 of July 6, 1960.

The record includes a balance sheet of September 30, 1960 which reflects the following:

ASSETS		LIABILITIES	
Cash - Petty	\$ 1,100.00	Loan payable	\$ 43,946.00
Bank	49,588.27	Account payable	1,782.13
Accounts Receivable	65,984.78		
Inventory	32,275.00	Capital stock	150,000.00
Prepaid insurance	1,972.17		
Investments	50,000.00	Deficit Jan. 1, 1960	\$65,513.01 (sic)
Furniture & Fixtures, depreciated	302.41	Profit Aug. 31, 1960	<u>78,920.00</u>
Rolling stock, depre- ciated	3,874.50		13,407.98
Improvements to rented property	<u>4,039.98</u>		
	\$209,136.11		<u>\$209,136.11</u>

The record discloses, however, that the bank account was maintained in a bank in New York. Therefore it was not within the jurisdiction of the Government of Cuba and could not have been taken by that Government. Accordingly, the assets are reduced to \$159,547.84. From this figure is deducted the liabilities of \$45,728.13, resulting in a net worth of \$113,819.71.

Pursuant to the community property law of Cuba, each claimant had a one-half interest in this stock, and the Commission concludes that claimants SYLVIA L. KAFFENBURGH and ALBERT W. KAFFENBURGH, JR. sustained losses in the amounts of \$56,909.85 and \$56,909.86, respectively, in this connection.

Cigarrera Nacional, S.A.

This company was organized in Cuba in 1935 to manufacture cigarettes. It was listed as intervened by the Government of Cuba on September 15, 1960 by Resolution 20260.

The record discloses that ALBERT W. KAFFENBURGH, JR. held 463 preferred shares and 926 shares of common stock of this company, for which he paid \$47,226 in 1955. It appears that this figure was reported to the Internal Revenue Service as his investment.

No evidence of the net worth of this company, or its properties, at the time of intervention has been submitted, although this was suggested several times. It cannot be concluded that claimant's original investment remained untouched, nor does the record give any indication of the net earnings of the company or any data from which a sound conclusion could be drawn as to its value on September 15, 1960.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

In the absence of probative evidence of the value of Cigarrera on September 15, 1960, the Commission is constrained to find that claimant has not sustained the burden of proof in this connection.

Accordingly, this item of claim is denied.

Recapitulation

Claimants' losses within the scope of Title V of the Act are summarized:

	<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
SYLVIA L. KAFFENBURGH	Residence and	December 23, 1960	\$190,270.25
	personalty	October 24, 1960	<u>56,909.85</u>
	Standard Havana		\$247,180.10
ALBERT W. KAFFENBURGH, Jr.	Residence and	December 23, 1960	\$190,270.25
	personalty	October 24, 1960	<u>56,909.86</u>
	Standard Havana		\$247,180.11

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered from the aforesaid dates of loss.

CERTIFICATIONS OF LOSS

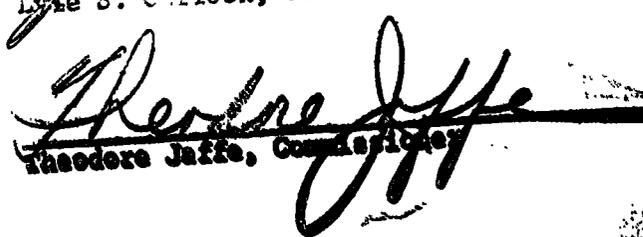
The Commission certifies that SYLVIA L. KAFFENBURGH suffered a loss, as a result of actions of the Government of Cuba within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Forty-seven Thousand One Hundred Eighty Dollars and Ten Cents (\$247,180.10) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that ALBERT W. KAFFENBURGH, JR. suffered a loss, as a result of actions of the Government of Cuba within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Forty-seven Thousand One Hundred Eighty Dollars and Eleven Cents (\$247,180.11) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.
and entered as the Proposed
Decision of the Commission

FEB 24 1971


Lytle S. C. Lock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)